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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,065	02/25/2004	Nicholas J. Berg	2241.0010000/TGD/JDS	8925

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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,065

Applicant(s)

BERG, NICHOLAS J.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11 August 2005. Therefore, claims 1-14 are examined on the merits as discussed below.

Claim Language Interpretation

2. It is noted that the term 'waste' as recited in claim 1 includes 'any material, constituent or product that is capable of being transferred, collected, and/or disposed of as recited on page 9 of the instant specification.

3. The term 'nozzle' as recited in claim 9 is given its broadest reasonable interpretation of 'a vent, or short tube that controls the flow of liquid' (Merriam-Webster online dictionary). A valve is 'a mechanical device by which the flow of liquid, gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more ports or passageways.' Therefore a 'valve' and 'nozzle' are interpreted to be equivalents since both tubular structures direct flow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-4 and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradbury et al. (US 5,741,238). Regarding claim 1 Bradbury et al. discloses vessel 20 for collecting, transferring, and disposing of medical and biological fluid wastes while minimize the human interaction and possible exposure to contaminated surfaces (abstract, lines 1-3, col. 1, ll. 54-63), comprising:

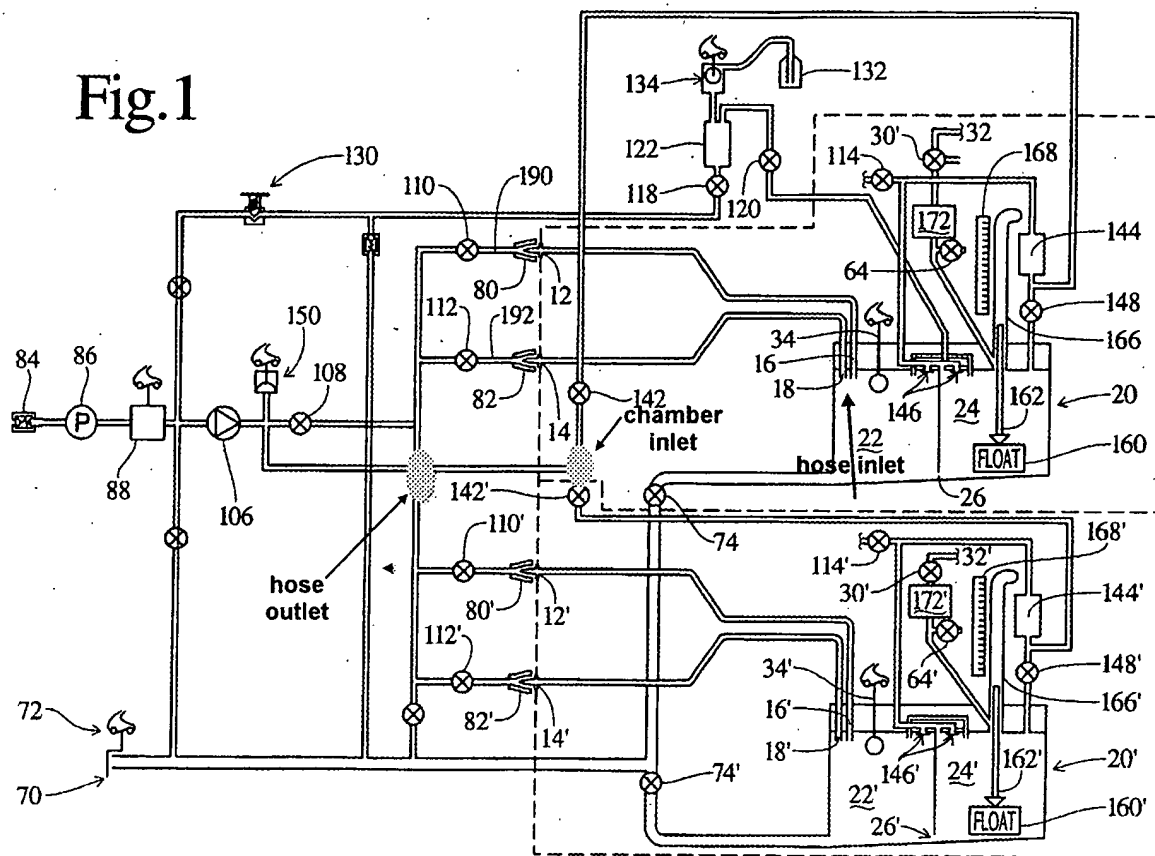
A tube/ waste material transfer hose 16 having an inlet/first chamber 22 and an outlet for transferring waste material (col. 3, ll. 46-53, figure 1);

A waste material collection chamber 24 having an inlet in communication with the outlet of the transfer hose 16 and an outlet adjacent drain hose 70 (col. 3, ll. 50-54, figure 1);

A vacuum connected to collection chamber 34 by a vacuum line 32 (col. 3, ll. 63-67); and

A disinfectant/cleaning fluid chamber 122 for holding a sufficient volume of disinfectant, said fluid chamber 122 communicating and receiving an inlet of the transfer hose 16 (col. 5, ll. 57-62, figure 1).

Fig. 1



Regarding claims 2 and 4 Bradbury et al. discloses a float switch 24 which senses the level of the fluid in the vessel 20 as the fluid level within the chambers rises and sends a signal to an electronic control circuitry/switch 40 that terminates suction when the vessel 20 is filled to capacity (col. 3, line 64-col. 4, line 14).

Regarding claim 3 Bradbury et al. discloses a drain hose/disposal pump connected to collection chamber/vessel 20 by outlet 70 to move waste material out of the collection chamber 20.

Regarding claim 6 Bradbury et al. discloses drain valve/filter 74 disposed within vacuum line 32 between the vacuum source and float switch 24 that allows residual

liquids to drain fully after pumping of disinfectant fluid has stopped (col. 6, ll. 30-34, figure 1).

Regarding claims 7-8 Bradbury et al. discloses cleaning fluid chamber 122 is positioned upstream/upward from the inlet of the transfer hose 16 and the waste collection chamber/vessel 20 and therefore permitting cleaning fluid to be drawn into the transfer hose and disposed of by the apparatus (figure 1, col. 5, ll. 45-50).

Regarding claim 9 Bradbury et al. discloses valve/suction nozzle 30 connected to a pathway along the inlet of the hose 16 (col. 3, ll. 63-64, figure 1).

Regarding claim 10 see the discussion above with respect to claims 1 and 3.

Regarding claims 11-13 see the discussion above with respect to claims 2, 6, and 4 respectively.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bennett (US 4,930,997). Bennett discloses a portable medical suction device 20 (col. 3, line 66), comprising:

A suction tube/waste material transfer hose 22 having an inlet and an outlet for transferring waste material (col. 6, ll. 21-22);

A reservoir bag/waste material collection chamber 120 having an inlet in communication with the outlet of the transfer hose 22 and a collection chamber outlet with vacuum source/suction tube 22 (figure 4);

A rinse bottle/cleaning fluid chamber 25 pumps water via a pump assembly 40 through to minimize the risk of cross contamination (col. 6, ll. 55-64).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury et al. (US 5,741,238) as applied to claims 1 and 10 above, and further in view of Olson (US 6,036,166). Bradbury et al. discloses the disposable pump for use with fluid waste but does not expressly disclose the disposable pump is a peristaltic pump. It is well known that various types of pumps are known for use in pumping viscous substances, such as diaphragm pumps and fixed and rotary peristaltic pumps as taught by Olson (col. 1, lines 13-15). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the disposable pump, thus providing a peristaltic pump.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tenniswood (US 6,146,136) is cited for showing a self-cleaning collection chamber 14 but no separate waste collection chamber, vacuum 30, transfer hose 36, and float valve 46 closes off communication between vacuum and collection chamber. Terry (US 5,242,434) is cited for showing waste collecting chambers 50,52 and service unit 120 that flushes hot and cold water through the connecting conduits.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Laura C. Hill
Examiner
Art Unit 3761

LCH

Handwritten signature of Laura C. Hill, appearing as 'LCH' in a stylized cursive script.

TATYANA ZALUKAEVA
PRIMARY EXAMINER

Handwritten signature of Tatyana Zalukaeva, appearing as 'Zalukaeva' in a stylized cursive script with a long horizontal flourish.